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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN BLILEY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A04-0602-CR-105

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0408-FA-85

August 30, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, John Bliley (Bliley), appeals his convictions of two counts of child molesting as Class A felonies, Ind. Code § 35-42-4-3.

We affirm.

ISSUE

Bliley raises one issue on appeal, which we restate as: Whether the evidence was sufficient to sustain Bliley's convictions.

FACTS AND PROCEDURAL HISTORY

In August 2002, Bliley, who was fifty-seven years old, performed in the musical Oklahoma at the Morris Performing Arts Center in South Bend, Indiana. Z.H., the victim, who was thirteen years old at the time, also performed in the musical.

During one of the productions, Z.H. and a friend went around asking men, "Are you secure in your homosexuality?" (Transcript p. 212). At some point, Z.H. asked Bliley if he was secure in his homosexuality. Bliley responded, "Yes." (Tr. p. 213). Z.H. probed further. Bliley again responded affirmatively adding, "but don't tell my wife." (Tr. p. 213). Z.H. was excited by Bliley's response because Z.H. was questioning his sexuality and at the time thought he was homosexual. Bliley was the second gay man Z.H. had ever known and he quickly became a confidant for Z.H.

A cast party was scheduled after the last production. Originally, Z.H. was going to get a ride to the party with another friend in the production. While striking the set (tearing it down), Z.H. asked Bliley for a ride to the party and told his friend he no longer needed a ride. On the way to the party Bliley and Z.H. stopped by Bliley's house to get

soft drinks for the party. After leaving Bliley's house they did not immediately go to the party. Instead, they drove around for fifteen to twenty minutes discussing their sexuality. Then, Bliley parked the car on a road along a cornfield. Z.H. did not believe they had been driving long enough to exit St. Joseph County and noted the sun was setting to his right, indicating they were facing south.

Upon stopping, Bliley and Z.H. began kissing. At some point, they both lowered their pants and performed oral sex on one another. Afterwards, they engaged in "idol chit-chat" on their way to the party. (Tr. p. 229). Some time after the incident, Z.H. revealed to his therapist what had happened between himself and Bliley.

On August 10, 2004, the State filed an Information charging Bliley with two counts of child molesting as Class A felonies, I.C. § 35-42-4-3. January 4 and 5, 2006 a jury trial was held. At the close of the trial, the jury returned a verdict of guilty on both Counts. Subsequently, on February 9, 2006, a sentencing hearing was held; Bliley was sentenced to twenty years on each count, with sentences to run concurrently.

Bliley now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Bliley argues there was insufficient evidence to sustain his child molesting convictions. Specifically, he contends the State failed to present sufficient evidence that the crimes occurred within the State of Indiana.

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App.

2006), *trans. denied*. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id.* A judgment based on circumstantial evidence will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt. *Id.*

“A person may be convicted under Indiana law of an offense if either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana.” I.C. § 35-41-1-1(b)(1). Territorial jurisdiction, which relates to the authority of the State to prosecute a person for an act committed within the State’s territorial boundaries, is not necessarily thought of as an element of the offense. *Ortiz v. State*, 766 N.E.2d 370, 374 (Ind. 2002). Nonetheless, we have determined that the State is required to prove territorial jurisdiction beyond a reasonable doubt. *Id.* (citing *Benham v. State*, 637 N.E.2d 133, 138 (Ind. 1994)). This is so because “where the law has established the necessity of a certain fact for an accused to be guilty of an offense, the existence of that fact is treated much like an element of the offense.” *Ortiz*, 766 N.E.2d at 374 (quoting *McKinney v. State*, 553 N.E.2d 860, 863 (Ind. Ct. App. 1990)). Thus, territorial jurisdiction must be proven by the State beyond a reasonable doubt. *Ortiz*, 766 N.E.2d at 374.

In *Ortiz*, the victim testified she was molested within ten minutes of leaving her home. *See id.* A police officer testified a person traveling the speed limit could reach Michigan in twenty to thirty minutes. *See id.* The police officer went on to testify that it

was possible to reach Michigan in ten minutes, without testifying that was in fact the case. *See id.* The supreme court concluded this was an invitation to reweigh evidence, declined to do so, and found the State presented sufficient evidence to establish the victim was molested within the territorial jurisdiction of Indiana. *See id.* at 375.

Here, Z.H. testified that after leaving Bliley's house they drove for about fifteen to twenty minutes before arriving at the cornfield. Z.H. also testified the sun was setting to his right, indicating they were facing south. A private investigator testified it would take between ten and fifteen minutes to drive from Bliley's house to the Michigan state line. As in *Ortiz*, however, whether a person could cross the Indiana/Michigan border in the time spent traveling is beside the point. *See id.* at 374-75. The question of whether Bliley and Z.H. were in Indiana or Michigan is essentially an invitation for us to reweigh the evidence. We decline. Instead, we find the State presented sufficient evidence to establish Bliley molested Z.H. within the territorial jurisdiction of Indiana. *See id.* at 375.

CONCLUSION

Based on the foregoing, we find that there was sufficient evidence to sustain Bliley's convictions.

Affirmed.

BAILEY, J., and MAY, J., concur.